

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Site Mitigation and Brownfields Reuse Program

REPORT ON CALIFORNIA EXPEDITED REMEDIAL ACTION
REFORM ACT OF 1994

January 1, 2005

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**Prepared Pursuant to section 4 of Senate Bill 923
(Calderon, Stats. 1994, Ch. 435)**

This report provides an overview of the activities of the Department of Toxic Substances Control (DTSC) to implement the Expedited Remedial Action Program (ERAP) pilot program. Statute requires DTSC to describe its activities and accomplishments annually, including steps to implement the ERAP pilot program, a listing of sites that have been issued a certificate of completion under the program, effectiveness of the program in expediting the cleanup of selected sites, a comparison of the program to DTSC's Voluntary Cleanup Program (VCP), and recommendations for administering the pilot program.

The ERAP Process

ERAP is a pilot project administered by DTSC's Site Mitigation and Brownfields Reuse Program to promote the cleanup of up to 30 hazardous substance release sites. The Site Designation Process, created by Assembly Bill (AB) 2061 (Stats. 1993, ch. 1184) was amended by Senate Bill (SB) 923 (Stats. 1994, ch. 435) to require the Site Designation Committee (the Committee) to also review and act on ERAP applications. The Committee is composed of the following six persons or their designees: Secretary for Environmental Protection; Director of DTSC; Chairperson of State Water Resources Control Board; Director of Department of Fish and Game; Director of Office of Environmental Health Hazard Assessment; and Chairperson of Air Resources Board.

Since June 1995, the Site Designation Committee has designated 18 sites to participate in ERAP. One of the sites, known as Tow Basin in San Diego, was dropped from the program because the applicant failed to enter into an enforceable agreement with the State. A total of six sites have been certified: ANR Freight Systems; Alhambra Manufactured Gas Plant; Fountaingrove Plaza; Panorama Drive; Lindberg Street Development; and Ferro Union Site, Burlington Northern Santa Fe Railway. There are two additional sites: Southern California Edison, Long Beach II and Amvac Chemical Corporation, which will be eligible for certification when deed restrictions are recorded, as required by statute and DTSC's Land Use Covenant regulations. ERAP provides for payment of "orphan" share remediation costs for up to ten sites allowable (depending on available State funding) where the responsible party is either insolvent, or cannot be located or identified. ERAP has designated five of the ten sites with orphan shares. Three of the sites have had their orphan shares paid and two more sites are still in the remediation process and will receive orphan share funding upon certification. Whether or not a site will be eligible for orphan share funding is determined by the ERAP application and approval process. In order to receive the orphan share funding, one or

more of the responsible parties must complete the investigation and remediation of the site and pay for all of DTSC's oversight costs. Once the site is certified, the responsible parties can submit a claim for payment of the orphan share.

A brief summary of all ERAP sites is provided as follows:

SITE STATUS REPORT

**1. ANR Freight Systems, Burlington Northern Santa Fe Railway
Vernon (Los Angeles County)**

Designated: June 28, 1995

Agreement: June 27, 1996

Certified: October 28, 1998

This site is part of Burlington Northern Santa Fe Railway's brownfields project that involves the purchase of properties to expand its inter-modal facility. This parcel was contaminated with lead from a former foundry.

Status: The site has been certified and is being used to store trailer trucks.

**2. California Steel Industries Company
Fontana (San Bernardino County)**

Designated: August 1, 1995

Agreement: July 8, 1996

California Steel Industries operates a steel milling facility on 400 acres of the former Kaiser Steel Plant site. Heavy metals and petroleum are the primary chemicals of concern.

Status: Three of the 31 areas of concern have been released for reuse after a Remedial Action Plan (RAP) was approved. The site investigation work has been completed and the report for the remaining 28 areas of concern and a risk assessment has been approved. The draft RAP has been prepared for this portion of the site and is currently under review by DTSC.

**3. Southern California Edison, Long Beach II
Long Beach (Los Angeles County)**

Designated: October 24, 1995

Agreement: June 24, 1996

This is the site of a former manufactured gas plant that operated at the turn of the 20th century. The site is located below a freeway overpass with an active oil production facility onsite. Contamination involves polynuclear aromatic hydrocarbons (PNAs) and oil. The selected remedy treated the PNA contaminated soil and groundwater with ozone using sparging technology. Following the treatment of the soil and groundwater, approximately 215 cubic yards of soil were removed.

Status: Remediation activities have been completed. The treatment system has been decommissioned and the site has been repaved. The Final Remedial Action Report was reviewed and approved by DTSC in October 2002. Due to the underground utility features, a thin layer of contamination remains at the site. Since the site was not cleaned up to residential standards (unrestricted use), a deed restriction must be recorded before DTSC will issue a Certification of Completion.

4. Alhambra Manufactured Gas Plant Site

Alhambra (Los Angeles County)

Designated: November 29, 1995

Agreement: April 16, 1996

Certified: February 28, 1998

This former manufactured gas plant is in a residential neighborhood and impacted approximately 20 homes. This is one of ten sites eligible to receive orphan share funds.

Status: Significant soil contamination was discovered during the site investigation process. Final remediation and restoration activities were completed in February 1998, at a cost of \$5.04 million. The allocation of liability resulted in 61 percent being apportioned to the orphan share. In Fiscal Year (FY) 1997-98, Southern California Edison submitted an orphan share claim of \$3.074 million. Two million nine hundred thousand dollars (\$2.9 million) was paid from the Expedited Site Remediation Trust Fund in FY 1997-98 and the remainder in FY 1998-99.

5. General Electric Company

Anaheim (Orange County)

Designated: April 24, 1996

Agreement: October 29, 1996

General Electric (GE) is using a phased approach to remediate polychlorinated biphenyls (PCBs) contaminated soils offsite, due to potential exposure to humans. Contamination at the onsite facility will be addressed at a later date. A risk assessment for the railroad right-of-way was accepted by DTSC in June 2000, for a health index of 1 milligram/kilogram of PCB under a residential scenario. The RAP was approved in October 2002, and the engineering design was approved in August 2003.

Status: Removal of the contaminated soil was implemented; however, complete removal of the contaminated soil is not feasible due to its proximity to a high pressure gas line. GE is requesting approval from the Orange County Transportation Agency to allow contaminated soil near the gas line to be left in place.

6. **Amvac Chemical Corporation**
City of Commerce (Los Angeles County)
Designated: May 29, 1996

Agreement: April 14, 1997

Pesticides and chemicals are manufactured at the facility, and a variety of chemicals have been discharged during the transfer of chemicals between the rail cars and product lines. This facility has two hazardous waste permitted units. A rail spur owned by Burlington Northern Santa Fe Railroad (Railroad) is located outside the facility.

Status: In June 1998, 2,000 cubic yards of pesticide and arsenic contaminated soil located outside the facility fence line were removed. The area was remediated to industrial standards, with residual arsenic contaminated soil remaining ten feet below the surface. Since offsite soil contamination remains at levels that prohibit residential (or unrestricted) land use, a deed restriction must be recorded before a Certificate of Completion can be issued. DTSC continues to negotiate a deed restriction with the Railroad while onsite contaminated soil and potential contaminated groundwater are being investigated. It is anticipated that Amvac will submit a plan for the closure of the hazardous waste permitted units in December 2004. DTSC's Hazardous Waste Management Program provides oversight of the investigation and the closure of the permitted units.

7. **Fountaingrove Plaza**
Santa Rosa (Sonoma County)
Designated: May 29, 1996
Certified: March 1, 1999

Agreement: January 7, 1997

This abandoned property was previously the site of a trucking operation and used for heavy equipment sales and repair, auto repair, petroleum storage, warehouse, and other industrial uses. Shallow groundwater is impacted by trichloroethylene (TCE). This is one of ten sites eligible to receive orphan share funds.

Status: The site has been certified and is in the Operation and Maintenance (O&M) phase. O&M requires the continued operation of a groundwater extraction trench and the discharge of extracted water into the sanitary sewer under a permit. In March 1999, Fountaingrove Plaza submitted an orphan share claim for \$415,664 which was paid by the Expedited Remedial Action Trust Fund in FY 1998-99. Due to changes in City of Santa Rosa discharge requirements, a granular activated carbon treatment system was installed in September 2003. The site completed its first five-year review in 2004.

8. **Panorama Drive**
Bakersfield (Kern County)
Designated: May 29, 1996
Certified: June 23, 1998

Agreement: January 7, 1997

A residential community consisting of 19 residential lots was built on this former burn dump that was operated by the City of Bakersfield (City). Soils were contaminated with lead and dioxin. Since the site has been certified, the City has purchased the majority of these properties and has resold them.

Status: Contaminated soil was removed and a Certification of Completion was issued. The properties were re-landscaped to allow for the homes to be resold.

9. **Golden Technology**
Santa Rosa (Sonoma County)
Designated: August 28, 1996

Agreement: March 20, 1998

Golden Technology operated a printed circuit board manufacturing company that released hazardous substances, including TCE and heavy metals. This is one of ten sites eligible to receive orphan share funds. DTSC had projected that the site would be certified in FY 2003-04 and the orphan share paid. However, the schedule has been delayed and the site is not projected to be completed until late FY 2004-05.

Status: A draft RAP to address vadose zone soils has been approved and the apportionment of liability for this portion of the work has been released. Implementation of the vadose zone soil remedy began in October 2004. A treatability study for the shallow groundwater has been approved and the North Coast Region, Regional Water Quality Control Board has issued Waste Discharge Requirements for this activity. This will be implemented in conjunction with the implementation of the vadose zone soil remedy. A work plan for further investigation of the lower aquifer has been approved.

10. **Ferro Union Site, Burlington Northern Santa Fe Railway**
Vernon (Los Angeles County)
Designated: October 30, 1996
Certified: August 2, 2004

Agreement: April 1998

This site is another part of Burlington Northern Santa Fe Railway's brownfields project that involves the purchase of properties to expand its inter-modal facility. This parcel is contaminated with lead from local contaminated debris material used as fill material.

Status: An asphalt cover on the property was completed and approved by DTSC in April 1999. Because hazardous substances remain in the soil and under the property, the RAP includes requirements for recording a deed

restriction and for O&M of the asphalt cover. A deed restriction has been recorded. The O&M Agreement has also been executed, the site has been certified, and is being used to store trailer trucks.

**11. Amvac Chemical Corporation
Commerce (Los Angeles County)**

Designated: March 27, 1997

Agreement: June 29, 1998

Pesticides and chemicals are manufactured at this location. This facility is adjacent to the rail spur site listed as item #6 above.

Status: Pesticides were discovered during the closure of underground tanks. Implementation of the Site Investigation Plan began in December 2002.

**12. Tow Basin, North Harbor Drive
San Diego (San Diego County)**

Designated: March 27, 1997

Site Dropped From Program

The San Diego Port District currently owns this parcel with the intent of revitalizing the parcel for commercial use. The Tow Basin (Building 923) is a concrete basin that was used to conduct hydrodynamic designs of boats, ships, submersible vehicles and seaplanes. Performance tests were also conducted on oil skimming systems designed for offshore oil spill clean-up. The primary contaminant of concern is PCB.

Status: The site was removed from ERAP for failing to negotiate an enforceable agreement. However, DTSC is addressing the site under the statutory authority of chapter 6.8 of the Health and Safety Code. For the soil operable unit, DTSC approved the Remedial Investigation/Feasibility Study (RI/FS) in June 2000. The RAP and California Environmental Quality Act (CEQA) requirements were completed in March 2002. DTSC is currently reviewing the Final Implementation Report that was submitted in October 2004. The groundwater investigation will begin after completion of the soil remediation.

**13. River Street Development
Santa Cruz (Santa Cruz County)**

Designated: December 11, 1997

Agreement: December 21, 1998

The site consists of nine parcels in downtown Santa Cruz, where considerable redevelopment is taking place. Soil and groundwater contamination includes total petroleum hydrocarbons related to an underground tank, PNAs and lead. This is one of ten sites eligible to receive orphan share funds. DTSC had projected that the site would be certified in FY 2003-04, however, the schedule has been delayed and the site is not projected to be completed until late FY 2004-05. The site is expected to receive \$1.9 million in orphan share funds in FY 2004-05.

Status: A RAP has been approved by DTSC and the apportionment of liability has been released. DTSC has responded to two requests for dispute resolution regarding the apportionment. DTSC modified the percentage of liability to PG&E in one of the disputes but made no changes to the response from the other dispute concerning Wilson Entities. Implementation of the final remedy was delayed until the City of Santa Cruz approved the subsequent redevelopment plans in October 2004.

**14. Lindberg Street Development
Santa Cruz (Santa Cruz County)**
Designated: December 11, 1997
Certified: March 1, 2001

Agreement: December 21, 1998

The site consists of two parcels in downtown Santa Cruz. Lead was likely released during a previous auto wrecking operation at the site, and is present in the soil. This is one of ten sites eligible to receive orphan share funds.

Status: The Lindberg Street site was certified in March 2001. Soil containing chemicals above residential cleanup goals were removed and disposed of offsite. In FY 2000-01, the responsible party submitted an orphan share claim for \$555,612 which was paid by the Expedited Remedial Action Trust Fund.

**15. PG&E Site
Redding (Shasta County)**

Designated: February 5, 1998

Agreement: November 3, 1998

This is the location of a former manufactured gas plant that operated from 1886 to 1947. After the plant was dismantled, PG&E sold several parcels which are now used for commercial businesses. A small stream adjoins a portion of the manufactured gas plant. PNAs and petroleum are present in the soil, and the groundwater contains petroleum hydrocarbons.

Status: The Site Investigation Report was approved in 2000. The final RAP was approved in June 2003. The final RAP requires a significant amount of soil to be removed, and the construction of an interceptor trench to capture contaminated water for treatment prior to a permitted discharge. The final RAP also requires eight quarters of groundwater monitoring after the remedial activities are completed. The Remedial Design and Implementation Plan were approved in July 2003. Removal of contaminated soil and installation of the interceptor trench and treatment unit were completed in the spring of 2004. A Completion/Closure Report will be submitted for DTSC review.

**16. PG&E Site
Colusa (Colusa County)**

Designated: February 5, 1998

Agreement: October 27, 1998

This is the location of a former manufactured gas plant that operated at the turn of the century until 1940. The site is located in the City of Colusa and is used by PG&E as a service center for gas and electric work crews, a substation and a pole yard. Subsurface soils are contaminated with PNAs, cyanide, phenyls and metals.

Status: PG&E submitted a Supplemental Site Investigation Report in September 2004. This report outlined soil samples collected and the results of the modified California Waste Extraction Test using deionized water analysis. DTSC will review this report and provide comments. Last year, DTSC also provided comments on PG&E's Risk Assessment Approach document.

17. PG&E Site

Fresno (Fresno County)

Designated: April 30, 1998

Agreement: November 3, 1998

This is the location of a former manufactured gas plant that operated from 1918 until 1929. The site is located in the City of Fresno and used by PG&E as a utility yard. A portion of the site was sold and is currently vacant. Soils are contaminated with PNAs and metals.

Status: In June 2003, DTSC approved PG&E's Risk Assessment work plan. In August 2003, PG&E submitted a revised Site Investigation Report. Based on the review of this report, DTSC has requested an assessment, a map of the site's property boundary, and a sampling proposal to define lateral extent of PNAs on the property. The proposed sample work plan and property lines are scheduled for submittal in December 2004.

18. Alhambra Combined Facility (Southern California Edison)

Alhambra (Los Angeles County)

Designated: April 29, 1999

Agreement: April 13, 2000

The site was used as a wood treating facility from 1920 until 1957. Since 1957, it has been used as a utility yard. Onsite soils are contaminated with pentachlorophenol and PCBs as a result of past site activities. Southern California Edison has divided the property into three operable units.

Status: The in-situ thermal desorption unit began operation at the Phase I Area of Operable Unit 2 in March of 2003. The treatment of this area was completed in July 2004. Treatment of Phase II began in July 2004 and remediation of this area is scheduled for completion by December 2004.

COMPARISON OF THE EXPEDITED REMEDIAL ACTION PROGRAM (ERAP) WITH THE VOLUNTARY CLEANUP PROGRAM (VCP)

ERAP: This Program provides significant incentives for redevelopment of contaminated properties by promoting cleanups based on the planned land use, by providing a covenant not to sue, and by outlining a fair and equitable liability scheme. ERAP was designed to test alternative methods for addressing cleanups and has provided ideas for future programmatic changes. Since 1994, 18 sites have been designated to participate in the pilot program and six sites have been certified as being satisfactorily remediated. In addition, three sites have completed their remedial action phase and have been returned to productive use, and two more sites will be eligible for certification when deed restrictions have been recorded: Southern California Edison, Long Beach II and Amvac Chemical Corporation. ERAP provides for mitigation rather than litigation by revising the liability scheme based on fair and equitable standards and it provides orphan share funding for up to ten sites. To date, three sites have received orphan share funds and more than \$4.045 million has been distributed in orphan share funding.

VCP: DTSC's VCP (replaced the "Walk-In" Program in 1993) allows motivated parties who are able to fund the cleanup under DTSC's oversight to move ahead at their own speed to investigate and remediate their sites. DTSC has found that working cooperatively with willing and able project proponents is an efficient and cost-effective approach to site investigation and cleanup of sites that do not pose a substantial threat to public health or the environment. This Program stresses the use of presumptive remedies and innovative technologies to expedite cleanups, along with a risk analysis and land use covenants that can link the cleanup standards with the planned use of the property. Since its creation in 1993, approximately 603 projects have entered the program, and approximately 386 have been successfully completed.

RECOMMENDATION: ERAP provides significant incentives for high-risk brownfield cleanups and this pilot project should be continued to fully test its alternative methods for addressing contaminated sites that pose a risk to public health or the environment. ERAP and the VCP program complement each other rather than compete. In addition, DTSC utilizes a variety of administrative and legislative tools to address brownfields.

DTSC'S BROWNFIELDS PROGRAM

For several years now, DTSC has been establishing a comprehensive Brownfields Program. Brownfields are properties contaminated or thought to be contaminated, and are underutilized due to perceived remediation costs and liability concerns. Governor Schwarzenegger and the Legislature have actively supported the redevelopment of brownfields to renew prosperity in California and reduce a burden on the environment. In the second half of the 2003-2004 Legislative Session, two major brownfields bills were signed by the Governor.

AB 389 (Stats. 2004, ch. 705) enacts the California Land Reuse and Revitalization Act of 2004 (Act). The Act makes legislative findings concerning brownfields properties and the importance of cleaning up these sites and returning them to productive use in order to protect public health and safety and the environment. The Act provides immunity from financial liability to an innocent landowner, a bona fide purchaser, or a contiguous property owner (as defined by the bill and under certain specified conditions). The Act establishes requirements for persons who want to qualify for the immunity provisions, and also on the regulatory agencies (DTSC and the State Water Resources Control Board (SWRCB)). It contains a sunset provision of January 1, 2010.

The Act requires DTSC to revise and upgrade its database systems to enable compatibility with the existing databases of SWRCB, including the Geographical Information System (GIS) mapping. DTSC must also maintain and display additional information on brownfields, as well as other types of sites. The Act authorizes DTSC to expend federal grant funding (when appropriate) to implement the database provisions.

In addition, the Act requires the California Environmental Protection Agency (Cal/EPA) to develop a form that the innocent landowner, bona fide prospective purchaser, or contiguous property owner is required to complete in order to qualify for immunity from liability. The bill requires Cal/EPA to prepare a legislative mandated report beginning in January 1, 2006 and post its findings on the Internet; and directs Cal/EPA to designate a "Brownfields Ombudsperson" using existing resources or when funding becomes available.

SB 805 (Stats. 2004, ch. 717) expands the application of the California Land Environmental Restoration and Reuse Act (CLERRA). Enacted in 2001, CLERRA (SB 32, Stats. 2001, ch. 764) gives cities and counties the authority to either order, or directly undertake, the investigation and cleanup of abandoned and underutilized parcels of brownfields properties. CLERRA provides local governments and certain owners, developers and lenders with limited immunities from requirements of State or local laws for further investigation or cleanup work on properties that have already been cleaned up pursuant to the Act's environmental oversight process. Prior to the passage of SB 805, a property larger than five acres of contiguous land under the same ownership was not eligible for cleanup under CLERRA. SB 805 allows the use of CLERRA to clean up a site that is under a single ownership and larger than five acres, if that site is an infill site and meets certain conditions, as specified by the bill.

For more information on DTSC's Brownfields Program see our web site at:
<http://www.dtsc.ca.gov/SiteCleanup/index.html#Brownfields%20Reuse>.

Attachment

Chaptered version of Senate Bill 923

Expedited Remedial Action Reform Act of 1994

GLOSSARY OF TERMS

Brownfields

Properties that are contaminated or thought to be contaminated which are underutilized due to perceived remediation costs and liability concerns.

CEQA

The California Environmental Quality Act (CEQA) requires public agency decision makers to consider and document the environmental implications of their actions.

DTSC

Department of Toxic Substances Control.

ERAP (Expedited Remedial Action Program)

ERAP provides a liability scheme based on fair and equitable standards; identification protection through a covenant not to sue; a risk-based cleanup based on the ultimate use of the site; a streamlined remediation process; and a dispute resolution process.

Deed Restrictions

A deed restriction is a recorded document that limits the use of property.

Land Use Covenants Regulations

Land Use Covenants (LUCs) include easements, servitudes, covenants and restrictions which run with the land and restrict uses for cleanups where hazardous wastes or constituents, or hazardous substances are left in place at levels not suitable for unrestricted use of the land. DTSC's LUC regulations were adopted on April 19, 2003.

Operable Unit

A term used for each of a number of separate activities undertaken as part of a cleanup. A typical operable unit would be the removal of drums and tanks from the surface of the site.

Operation and Maintenance

These are activities that must be maintained or monitored after a site has been remediated in order to protect public health or safety or the environment. The activities include such things as maintaining an asphalt cap or monitoring groundwater wells.

Remedial Action Plan (RAP)

This is a remedy selection document that explains the reasons for selecting a cleanup alternative for a contaminated site. A key element of a RAP is to provide the public with an opportunity to comment on the proposed cleanup remedy. DTSC is required to consider all comments before approving the final RAP.